

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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GABRIEL MOSES BURKE,

Plaintiffs,

-against-

TAQUERIA EL PATRON,

Defendants.

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Appearances:

For the Plaintiff:

JULIA M. SANDS
Hamra Law Group, P.C. Legal
1 Linden Place, Suite 207
Great Neck, NY 11021

For the Defendant:

BRETTY GALLAWAY
McLaughlin & Stern, LLP
260 Madison Avenue
New York, NY 10016

BLOCK, Senior District Judge:

Plaintiff Gabriel Moses Burke (“Burke”) commenced this action on April 18, 2023, alleging violations of the Americans with Disabilities Act. (ECF No. 1). An Initial Conference was held in this case on October 17, 2023. (See Minute Entry dated 10/19/2023). On December 5, 2023, the parties notified the Court that a settlement in principle had been reached. (ECF No. 17). Since then, the Court has issued multiple Status Report Orders which plaintiff has not complied with. (See Electronic Orders dated 12/5/2023, 1/11/2024, 1/19/2024). On February 8, 2024, the magistrate judge formerly assigned to this case Ordered plaintiff to Show Cause by February 28, 2024, why this action should not be dismissed for failure to prosecute. (ECF No. 21). Plaintiff provided no response to the Order to Show

Cause.

On March 18, 2024, Magistrate Judge Pollak issued a *sua sponte* Report and Recommendation (“R&R”) recommending that the Court dismiss Burke’s claims without prejudice for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure. The R&R gave the parties fourteen days to file objections, i.e., until April 1, 2024, and warned that “[f]ailure to file objections within the specified time waives the right to appeal the District Court’s order.” R&R at 2. No objections have been filed.

If clear notice has been given of the consequences of failing to object, and there are no objections, the Court may adopt the R&R without *de novo* review. *See Thomas v. Arn*, 474 U.S. 140, 149-50 (1985); *Smith v. Campbell*, 782 F.3d 93, 102 (2d Cir. 2015) (“Where parties receive clear notice of the consequences, failure to timely object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.” (citations omitted)). The Court will, however, excuse the failure to object and conduct *de novo* review if it appears that the magistrate judge may have committed plain error. *See Spence v. Superintendent, Great Meadow Corr. Facility*, 219 F.3d 162, 174 (2d Cir. 2000).

No error, plain or otherwise, appears on the face of the R&R. Accordingly, the Court adopts the R&R without *de novo* review. Burke’s claims are dismissed

without prejudice for failure to prosecute pursuant to Rule 41(b) of the Federal Rules of Civil Procedure. The Clerk shall enter judgment in accordance with this opinion.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
June 11, 2024